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March 17, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 13, 2005

Case Number: TSO-0291

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that access authorization should not be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information causing the security concern.

The letter identified two areas of concern with respect to the individual: excessive use of alcohol and falsification to the DOE. With respect to the alcohol issue, the letter stated that the

1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

individual has been diagnosed by a DOE consultant psychologist (hereinafter consultant psychologist) as suffering from alcohol dependence (in early partial remission) and bi-polar disorder II stabilized. The Notification Letter also indicated that the individual has not shown adequate evidence of rehabilitation or reformation. These conclusions were set forth in the consultant psychologist's evaluation letter of March 2005. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J). ²

The letter also referred to the individual's statement in a January 28, 2004 personnel security interview to the effect that he had no intention of using alcohol in the future. The letter then noted the individual's March 8, 2005 statement to the consultant psychologist and a January 15, 2004 statement to a clinical psychologist that he is continuing to use alcohol as a form of relief if his regular medications are insufficient to control the symptoms of his bi-polar disorder. The letter cited these statements as discrepant, and as giving rise to a security concern under 10 C.F.R. § 710.8(f)(Criterion F), which pertains to falsifications.

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on his own behalf. He also presented the testimony of the staff psychologist at the facility where he is

2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Since the consultant psychologist believed the individual's bi-polar disorder was stabilized, he did not diagnose the individual as suffering from a mental condition which causes or may cause a defect in judgment or reliability. 10 C.F.R. §710.8(h)(Criterion H). See DOE Exh. 7 at 9. Accordingly, a Criterion H security concern was not included in this case.

employed (staff psychologist), his treating psychologist, his therapist, his AA sponsor, his wife, his supervisor, and a co-worker. The DOE Counsel presented the testimony of the DOE consultant psychologist.

II. Hearing Testimony and Documentary Evidence

A. Documentary Evidence Presented at the Hearing

At the hearing, the individual presented statements from two friends and a co-worker all attesting to the individual's honesty, reliability and trustworthiness.

B. Testimony

1. The Individual

The individual stated that in September 2003 he came to the conclusion that he was experiencing serious psychological difficulties and sought help from his supervisor, and the staff psychologist. He indicated that he felt "out of control," and had "tremendous depression," and sleep problems. He stated that he was "terrorizing his family." His moods were unstable, with highs and lows. At that time, he was drinking alcohol very heavily to self-medicate. Tr. at 64-66.

The staff psychologist referred him to a psychiatrist (individual's psychiatrist) who diagnosed him with bi-polar II disorder and in October 2003, prescribed a medication regimen. The individual stated that he began to feel somewhat better immediately, but it was with a more recent medication adjustment in May 2005 that he noticed the most significant improvement. He stated that in October 2005 he began psychotherapy treatment with his therapist, and that this is very helpful to him. Tr. at 78.

The individual stated that in 2003 he began reducing his alcohol use and began an abstinence period in February 2005. However, on May 13 and 14, 2005, he had a relapse. He testified that he had several beers, but did not become intoxicated. He stated that he "got nervous" and this caused him to turn to alcohol. Tr. at 121. He testified that this was his last use of alcohol, and that he did not intend to use alcohol ever again. He began participating in AA in October 2005, and has had a sponsor since that time. Presently, he attends three to four AA meetings per week. He testified that he has a very strong support system in place and knows what to do now if he feels the urge to use alcohol or if he feels a period of

mood instability: he will call on his wife, his AA sponsor, his therapist, the staff psychologist and his psychiatrist. Tr. at 79, 80, 124.

With respect to his statement at the PSI that he intended not to use alcohol in the future, the individual testified that he was not educated at that time. He stated, "I had no idea. I thought I was going to be able to do it and I thought there would be no problem." Tr. at 120.

2. Personal Witnesses

The individual presented four personal (non-expert) witnesses. These included his wife, his AA sponsor, a colleague and a supervisor. The individual's wife testified that before 2003 their marriage went through some difficult times. She stated that after the individual sought treatment in 2003, there were great changes in his personality and their relationship and home life improved. She indicated that before he understood that he had bi-polar disease, he used alcohol to calm himself and to fall asleep. She stated that after he began receiving help from his psychiatrist, he realized that his alcohol problem was intertwined with his bi-polar disorder. Therefore, at the end of 2003, he began cutting down on drinking. She indicated that she especially noticed improvements in his overall attitude and demeanor beginning in January 2004. She has not seen him use alcohol since February 2005, although she knew about the May 2005 relapse. She testified that he attends AA five or six times a week, and sees his therapist once a week. She indicated that since he has begun treatment, there have been significant changes in the way he treats her and his family. She believes him to be honest and sincere about his alcohol problem. Tr. at 35-62.

The AA Sponsor stated that he met the individual at AA and has been his sponsor since October 2005. He indicated that he sees the individual at three or four meetings per week, and the individual plays an active role at the meetings. He believed that the individual had been abstinent since March 2005. He believes the individual is sincere, honest and committed to remaining abstinent. He indicated that he and the individual are in frequent contact and that the individual calls him about personal issues. He stated that he is a personal resource for the individual. Tr. at 9-24.

Both the colleague and supervisor testified that the individual is a good worker who is honest and intelligent. The colleague believes the individual is serious about abstinence from alcohol and has

accepted that alcohol is a problem for him. He stated that since the individual's bi-polar medication was adjusted, the individual feels better. Tr. at 24-35.

3. Individual's Therapist

The therapist indicated that as of the date of the hearing she had seen the individual 12 times and had had family sessions with the individual's wife. She stated that she is working with the individual on his alcohol dependence, bi-polar problems and post-traumatic stress disorder. She stated that he is eager for therapy, and she gives him a very positive prognosis. Although she is aware that the individual drank beer in May 2005, she considers his sobriety date as February 27, 2005, because that was the date he was last intoxicated. She believes that a long recovery period is not necessary for this individual because he is stronger in recovery than most people she has worked with, and he has a deep commitment to his recovery. Tr. at 101. She stated he is very unlikely to experience a relapse because he has a strong support plan in place. Tr. at 95. She believes he knows how to take care of himself if he feels "too hungry, angry, lonely, tired or upset." Tr. at 95. He knows to talk to his support group, or, if there is a medication issue, to contact his psychiatrist. Tr. at 96.

With respect to his failure to live up to his statement at his PSI that he did not intend to use alcohol again, the therapist believed that this was not a falsification issue. Rather, it was her opinion that at that time the individual was not yet in a position to fully grasp the implications of such a commitment. Tr. at 109-112.³

4. Individual's psychiatrist

The individual's psychiatrist stated that he first began treating the individual in October 2003. He diagnosed the individual as suffering from bi-polar disorder and a social phobia. He did not specifically state that the individual was alcohol dependent. Rather, he believed that the individual used alcohol to self-medicate for the bi-polar disorder.⁴ The individual's psychiatrist indicated that the first type of medication that he used to treat the individual's mood disorder produced unpleasant side-effects and

3/ The staff psychologist also held this view. *Id.*

4/ The individual's psychiatrist believed that the individual suffered from an "alcohol problem." DOE Exh. 22.

that the individual began to experience a significant transition when he changed medications in May 2005. He believed that the individual was using alcohol to self medicate until the change in medication. He believes that the individual is no longer self-medicating, that his mood is calm and balanced, not depressed or anxious. Tr. at 130-134. In his view, the individual's risk of alcohol relapse is extremely low because the individual knows how to take care of his "personal issues." Tr. at 142. He stated that he is confident about this opinion because he has known the individual for three years. He has noted the individual's perseverance, and his willingness to continue with AA, use psychotherapy, and work on getting his medication properly adjusted. Tr. 144-45. The psychiatrist did not believe the individual's use of alcohol in May 2005 was a "relapse," but rather a "slip," since the individual did not become intoxicated. Tr. at 176.

The psychiatrist believed that the individual was not lying in the PSI when he asserted that he intended to refrain from alcohol use in the future. The psychiatrist believed that this promise was, at the time "naive," one that he was not ready to make. Tr. at 136.

5. Staff Psychologist

The staff psychologist stated that it is his role to monitor, observe and establish employees' fitness for duty, not to treat employees. He confirmed that the individual came to him on his own accord, stating that he was experiencing some problems, including sleep disorders, anxiety, agitation, and excessive alcohol use. The staff psychologist testified that such "self identification" of a personal problem is very unusual. Tr. at 147-48.

With respect to the individual's alcohol use, the staff psychologist testified that he believes the individual has been abstinent since May 2005, and that he has a "wonderful" prognosis with the eight months of abstinence he has achieved. The reasons he gave for his bright outlook were that the individual admits he is an alcoholic; accepts his mood disorder; complies with his treatment; has a positive connection with his psychiatrist, his therapist and AA; has a supportive family; and has his mood disorder under control. Tr. at 152.

Referring to the individual's last use of alcohol in May 2005, the staff psychologist stated that it was not a full relapse, since the individual did not resume his prior level of use. However, the staff psychologist testified that while the individual could not have a more positive prognosis at this point, the individual needs

one full year of complete abstinence in order to establish rehabilitation. Tr. at 153. The staff psychologist distinguished his role from that of the therapist and the individual's psychiatrist by stating that these experts treat their patients, whereas his focus, as stated above, is to determine fitness for duty. Tr. at 155. He believed that the one-year abstinence yardstick strikes an appropriate balance between this individual's very good prognosis and a larger body of literature suggesting that a one-year minimum is necessary. Tr. at 156-57, 168.

6. The DOE Consultant Psychologist

The DOE consultant psychologist reiterated his original diagnosis that the individual suffered from alcohol dependence, and agreed with the diagnoses of the other experts that the individual also suffered from bi-polar disease, and post-traumatic stress disorder (PTSD). He was impressed with the individual's "marvelous progress." He noted that the individual is engaged in solid treatment processes, including psychotherapy, alcohol counseling, psychiatry, and AA, and has a positive life relationship. He believed that the individual had resolved his marriage difficulties and had stabilized his bi-polar disease. However, he noted that bi-polar disease is recurrent and requires monitoring, although he stated that this disease was stabilized. He also noted that the individual has had only three-or four months of psychotherapy treatment for the PTSD. He believed that early phases of psychotherapy for PTSD can be destabilizing, as early memories are addressed. Tr. at 160-62.

With respect to the individual's alcohol dependence, the DOE consultant psychologist noted the individual's "positive prognostic signs," including his commitment to change, reduced psychological stressors, stabilized medication regimen, positive therapeutic alliances with a psychiatrist and a therapist, and involvement with AA. However, the consultant psychologist also pointed out that (i) the individual has undergone only about three or four months of psychotherapy; (ii) the individual's adjusted bi-polar medication was not begun until May 2005, and not finalized until November; (iii) he did not begin alcohol counseling with his therapist and engagement with an AA sponsor until October 2005. While he was impressed with the individual's treatment regime, overall, the DOE consultant psychologist believed that the individual still needed

to demonstrate one year of abstinence, dating from May 2005.⁵ Tr. at 162-65.

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

^{5/} This one-year abstinence period was a reduction from the 18-month period that the DOE consultant psychologist suggested in his original evaluation to the DOE. This change was based on the fact that the DOE consultant psychologist was impressed with the individual's commitment to his therapies and positive life-style changes. Tr. at 164.

IV. Analysis

The issues in this case are (i) whether the individual has resolved the Criterion J concern by demonstrating that he is reformed and/or rehabilitated from his alcohol dependence; and (ii) whether he has resolved the Criterion F concern regarding his assertion that he did not intend to use alcohol in the future. As discussed below, I find that the individual has not resolved the first concern, but has resolved the second one.

Criterion J

The individual in this case does not dispute the DOE consultant psychologist's diagnosis that he suffered from alcohol dependence. The issue in this case is therefore whether the individual has demonstrated that he is reformed and/or rehabilitated from this condition. As discussed below, I find that the individual is not reformed/rehabilitated at this time.

As an initial matter, I am convinced that, as he testified, the individual has been abstinent from alcohol since May 2005. The individual's wife indicated that she had not seen him use alcohol since February 2005, but was aware of the May relapse. I find her testimony highly credible. She is very familiar with the individual's pattern of using alcohol and described how he would normally use alcohol in the garage where he could not be observed. She stated that this has not happened since May 2005.

I was also very impressed by the individual's commitment to his abstinent life-style for the future. He testified persuasively about why he intends to remain abstinent. He stated that he feels better emotionally and physically, and that his relationship with his family is better now that he is living an abstinent lifestyle. In this regard, the individual recognized the importance of adhering to his medication for his bi-polar disease, which in the past caused him to turn to alcohol for relief. It is evident that the individual has a strong support system that includes his wife, his therapist, his psychiatrist and his AA sponsor with whom he can discuss his stresses, thereby alleviating the need for alcohol to relieve anxiety. For example, his AA sponsor corroborated that he does indeed turn to him for support. Tr. at 23.

I am also persuaded about the individual's genuine commitment to his rehabilitation program, including his participation in AA and his work with this therapist. The individual's AA sponsor corroborated that the individual is serious about his work in the AA program and in completing the AA steps. The sponsor spoke in detail and with

conviction about the individual's active and serious AA participation.

The individual's therapist and psychiatrist and the DOE consultant psychologist and the site psychologist spoke in highly favorable terms about the serious manner in which the individual has approached his therapy and his medication regime for his bi-polar disorder. They were all very impressed with the individual's progress. All these witnesses were convinced that he is seriously committed to his abstinent life style and gave him a very good prognosis. Thus, all the signs at this point are very much in his favor.

However, there is disagreement among the experts as to whether the individual is rehabilitated. The individual's experts, the therapist and the psychiatrist, believed that it is appropriate to consider the individual's abstinence period as beginning in February 2005. They do not consider the May 2005 use of alcohol to be a relapse, because, in their view, a relapse means that the individual would have become intoxicated. Since the individual allegedly drank only one or one and one half beers at that time, they believe that this minimal use should be disregarded. Based on the February 2005 abstinence date, the individual's two experts believe that a year of abstinence had virtually been met, since the hearing took place in January 2006. They believe that this period is adequate for judging rehabilitation and concluding that the individual is indeed rehabilitated.

The DOE's experts, the staff psychologist and the consultant psychiatrist, testified that the abstinence period should begin with the individual's last use of alcohol, i.e., May 2005. Both believed that it was at this time that the individual fully realized that using alcohol was no longer an option for his lifestyle. Tr. at 174. Since they think that a year of abstinence is necessary, these two experts took the position that the individual is not yet rehabilitated because, as of the time of the hearing, he had had only about 8 months of abstinence.

I agree with the DOE experts on this issue. I believe that it is appropriate to date the individual's abstinence period from May 2005, not from February. The individual's experts minimized the May use of alcohol, characterizing it as a "slip" rather than a "relapse," since the individual did not become intoxicated. They therefore urged that the "slip" be disregarded.

I cannot agree with that view. I am not convinced by the attempted minimization of the significance of the resumed alcohol use. In this case, involving a security concern based on alcohol dependence,

the DOE must be reasonably reassured that the individual can refrain from all use of alcohol for an appropriate period. Even a minimal use of alcohol during the abstinence period suggests that the individual may not be able to control his impulse to use alcohol. In this case, the one year abstinence period seems to be a bare minimum for this individual. ⁶ The basis for this is that during the first year of abstinence, the probability of relapse is high. The one-year abstinence period allows an affected individual to go through a sufficient number of ups and downs that normally occur within a year to gauge whether he can withstand normal stresses without turning to alcohol. *Personnel Security Hearing* (Case No. TSO-0150), 29 DOE ¶ 82,800 (2005).

Further, as noted above, the individual has used alcohol in the past to treat the symptoms of his bi-polar disorder. Therefore, this individual has the additional complication of having to insure that his medications are adequate to control this disease, which affects his mental and emotional stability. His latest adjustment in his medication for the bi-polar disorder was complete only as of November 2005. I believe that an additional period of time is necessary to test the effectiveness of his bi-polar medication.

Having finished only about eight months of complete abstinence as of the time of the hearing, the individual in this case has not finished this aspect of his rehabilitation. It is not yet clear that he is able to withstand the normal stressors that occur within the year. Thus, in my view, it is still somewhat early to conclude that the individual is reformed/rehabilitated from his alcohol dependence.

Criterion F

As stated above, the individual indicated in his January 2004 PSI that he had no further intention to use alcohol, yet he later indicated to the DOE psychologist that he was continuing to consume alcohol. I do not believe that in his PSI the individual falsified his intentions with respect to future use of alcohol. I am wholly convinced, as he states, that he did not fully understand the nature of the commitment he was making at the PSI. As the experts in this

^{6/} In comparison to other personnel security cases involving alcohol dependence, the one-year abstinence period that the DOE consultant psychologist recommended was rather brief. In some personnel security cases involving alcohol dependence, a DOE consultant psychiatrist has recommended a two-year abstinence period. *E.g., Personnel Security Hearing* (Case No. TSO-0218), 29 DOE ¶ 82,840 (2005).

case testified, the individual was uneducated and naive at the time he made this assertion to the DOE. I do not believe that there is any reason to believe that this individual is likely to be untruthful with the DOE in the future on this issue. Accordingly, I find that the Criterion F concern has been resolved.

V. CONCLUSION

As is evident from the above discussion, I was very impressed by the testimony of the individual and his witnesses. The individual has clearly come a long way. He is sincere in his commitment to an abstinent lifestyle. The record in this case indicates that this individual simply needs some additional time in his abstinent lifestyle and therapy program in order to be considered rehabilitated.⁷

Accordingly, I find that the individual has not resolved the Criterion J concerns associated with his alcohol use. I find that he has resolved the Criterion F concerns.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: March 17, 2006

^{7/} In this regard, the individual submitted a post-hearing update of his rehabilitation efforts. This submission, dated February 20, 2006, indicates that since the hearing, he has continued his weekly appointments with his therapist and has attended 20 AA meetings. These assertions re-enforce my overall impression that this individual is very serious about his commitment to his alcohol-free life style.